

GREENWOOD COMMON COUNCIL

ORDINANCE NO. 03-22

**AN ORDINANCE TO ESTABLISH AN EQUITABLE IMPACT FEE FOR THE
PURPOSE OF PLANNING AND FINANCING PARK AND RECREATIONAL
INFRASTRUCTURE TO SERVE NEW DEVELOPMENT IN THE CITY OF
GREENWOOD**

WHEREAS, it has been determined that it is reasonable and necessary to promote and accommodate orderly growth and development and to promote the general public health, safety and general welfare of the citizens of the City of Greenwood by providing for an equitable program to fund the capital costs of new park and recreational infrastructure necessary to serve newly developing areas of the City; and

WHEREAS, it has further been determined that it is reasonable and necessary to promote the orderly development of the City by establishing standards by which the City may require that new development shall pay an Impact Fee representing the development's proportionate share of the cost of capital costs of new park and recreational infrastructure necessary to serve the new development; and

WHEREAS, it is determined that new development should not be required to pay a fee for the capital costs of such new park and recreational infrastructure greater than the development's proportionate share of the capital costs of such infrastructure which is needed to serve such development; and

WHEREAS, the City of Greenwood has caused to be prepared an Infrastructure Improvement Plan for Parks and Recreation Facilities ("the Plan"), a supplement to the 2002-2006 Parks and Recreation Master Plan, by Lehman & Lehman, Inc., in association with Wightman Petrie, Inc., which Plan is attached hereto as Exhibit "A" to this Ordinance and made a part hereof; and

WHEREAS, the cost of implementing the park and recreational recommendations of said Plan in their entirety exceeds:

- (1) the income capacity of the City through its ad valorem property tax receipts or other tax distributions allocated to park and recreational improvements relative to the chronological needs of the City for said improvements;
- (2) the general obligation bond capacity of the City based upon net assessed valuation;
and
- (3) the revenue bond potential of the City based upon any existing means of acquiring revenue related to such improvements; and

WHEREAS, because of the size of the City, considering both its population and geographic area, as well as the distribution of public and private institutions, services and other facilities through the City, any park and recreational improvement benefits all citizens of the City equally; and

WHEREAS, it has been the objective of the City that the Plan should result in the determination of an impact fee which meets the rational nexus test as that test is understood by current applicable statutory law and case law; and

WHEREAS, the City of Greenwood Advisory Plan Commission, having conducted a public hearing upon, and given due deliberation to, the Zone Improvement Plan encompassed by the Plan prepared by Lehman & Lehman, Inc., has recommended its adoption (8 - 0) to the Common Council; and

WHEREAS, the Mayor has previously appointed the Greenwood Impact Fee Advisory Committee to advise the Common Council pursuant to I.C. § 36-7-4-1312; and

WHEREAS, the purpose of this Ordinance is declared not to deter growth, remedy existing infrastructure deficiencies or pay for maintenance or other “non-capital costs”,

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF GREENWOOD, INDIANA, THAT:

Section 1. Limitation on Imposition of Impact Fee. This Ordinance shall expire and become void five (5) years after its effective date as required by I.C. § 36-7-4-1340, unless action is undertaken to extend its life consistent with the provisions of said Code section which contemplates a replacement ordinance.

Section 2. Establishment of Impact Zone. There is hereby established one Infrastructure Impact Zone, the boundaries of which are co-terminus with the existing corporate boundaries of the City of Greenwood, Indiana, and, as they may be extended from time to time through annexation, and over which the City of Greenwood exercises planning and zoning jurisdiction. In this regard, the Common Council specifically finds that there is a functional relationship between the components of the Plan and that such Park and Recreational Plan provides a reasonably uniform benefit to all citizens throughout the Impact Zone as of the adoption of this ordinance. The Common Council further finds that all areas within the Impact Zone are contiguous as required by I.C. § 36-7-4-1316. Except as provided herein, this Ordinance shall apply uniformly to all residential developments within the Impact Zone hereby established for which the City of Greenwood may require a structural building permit and which creates a need for new and additional park and recreational infrastructure. This Ordinance shall not apply to:

- (a) developments meeting the requirements set forth in I.C. § 36-7-4-1322(g);
- (b) improvements which do not require a structural building permit;

- (c) improvements which do not create a need for new and additional infrastructure, including the erection of a sign, construction of accessory buildings, structures or fences or the alteration, renovation or expansion of an improvement where the use, or intensity thereof, has not changed.
- (d) the replacement of a destroyed or partially destroyed improvement, provided that the replacement improvement does not create a need for new and additional infrastructure over and above the infrastructure needed by the original improvement prior to the destruction or partial destruction thereof;
- (e) non-residential development.

Section 3. Zone Improvement Plan. As a precondition to the adoption of this Ordinance, the Common Council undertook a comprehensive and detailed park and recreational impact analysis through the employment for that purpose of Lehman & Lehman, Inc. The Common Council now finds that the resulting study and data base constitute a sufficient study to constitute a "Zone Improvement Plan" as contemplated by I.C. § 36-7-4-1318. The Common Council does hereby adopt the Plan prepared by Lehman & Lehman, Inc., dated May 14, 2003, as its Zone Improvement Plan and specifically finds that said Zone Improvement Plan contains the following elements:

- (a) Reasonable estimates relating to the nature and location of development that is expected within the Impact Zone during the planning period, which, for purposes of this Ordinance is defined to be a period of ten (10) years commencing with the date of adoption hereof.
- (b) A reasonable determination of the community level of service for the Impact Zone.
- (c) A reasonable determination of the current level of service provided within the Impact Zone.
- (d) A reasonable estimate of the nature, location, sequencing, and timing of the park and recreational requirements and costs necessary to provide the community level of service for the developments contemplated in Sub-paragraph (a) hereof.
- (e) A reasonable estimate of the share of the park and recreational costs identified in Sub-Paragraph (d) hereof that will be used to:
 - (1) Raise the current level of service for existing development or provide service to existing development; or
 - (2) Provide service to new development.
- (f) A reasonable estimate of revenues that:

- (1) are from sources other than impact fees; and
- (2) Will be used to finance the cost identified in Sub-Paragraph (e)(1) above.
- (g) A description of the nature and location of existing infrastructure in the Impact Zone.
- (h) A general description of the sources and amounts of money used to pay for infrastructure during the previous five years.

Additionally, the Common Council hereby specifically adopts the Zone Improvement Plan as an official part of the Comprehensive Plan of the City of Greenwood, pursuant to I.C. § 36-7-4-500 et seq.

Section 4. Establishment of Park and Recreational Impact Fee. Based upon the Plan previously referred to and which is made a part of this Ordinance, the Common Council determines that the cost per equivalent single-family dwelling unit is Seven Hundred Seventy-Three Dollars (\$773.00). Based on the equivalent dwelling unit calculations used by the City, the Common Council hereby establishes the Park and Recreation Impact Fee in the following amounts for single-family units, duplexes, apartments, condominiums, and mobile homes:

<u>Type of Unit</u>	<u>Fee Per Dwelling Unit</u>	<u>Full Equivalent</u>
Single-Family	\$773	100%
Duplex	\$734	95%
One Bedroom Apartment or Condo	\$502	65%
Two Bedroom Apartment or Condo	\$657	85%
Three Bedroom or Larger Apt. or Condo	\$773	100%
Mobile Home	\$502	65%

The Common Council hereby makes as a part of the record of these proceedings, all of the data collected, the calculations made, and the conclusions reached by Lehman & Lehman, Inc. in the process of developing the Zone Improvement Plan, and specifically instructs the employees of the City to make such data and other information inclusively available to anyone for review during regular business hours.

In the event that any parcel of real estate considered in the creation of the Zone Improvement Plan undergoes a change in use, redevelopment, or a modification which requires a structural building permit, and creates a need for new infrastructure, an impact fee will only be assessed for the increase in the burden on infrastructure.

Section 5. Credit in Lieu of Payment: Exemptions. Any person or entity obligated to pay a fee pursuant to the terms of this Ordinance may have the option of financing, constructing and dedicating park and recreational infrastructure to be owned and operated by the City for the public benefit, all as described and defined in the Plan, instead of making all or part of any impact fee payment which may be due, so long as such financing, construction and dedication are accomplished pursuant to the Plan of the City, and in accordance with the park and recreational specifications for such park and recreational infrastructure to be improved in force within the City's jurisdiction at the time. Such fee payer, or other person or entity providing the infrastructure or improvement, shall be given credit for the actual costs of planning, financing, and constructing such park and recreational dedicated to the City. Such request for credit shall be presented prior to the issuance of the structural building permit. In the event the actual cost of such planning, financing, and construction do not equal the amount of the impact fee pursuant to the calculation provided for in the schedule set forth in Section 4 hereof, the remaining balance shall be due in accordance with the provisions stated hereafter.

Credits against impact fees otherwise due shall be allowed pursuant to this Section for all infrastructure improvements constructed or furnished in accordance with I.C. § 36-7-4-1313 and I.C. §36-7-4-1335 since January 1, 1989. In addition, a fee payer or other person or entity responsible for installing infrastructure or improvements may designate in writing a method of allocating its credits to future fee payers who may be successors in interest to the credits earned by the fee payer or others, as part of the certification provided for above.

Any person or entity otherwise obligated to pay the fee established by this Ordinance whose property was totally or partially destroyed by fire, storm, or other casualty beyond his/her/its control, shall be exempt from said fee if he/she/it repairs or replaces the destroyed structure without creating a burden on infrastructure greater than the burden imposed by the destroyed infrastructure. In the event of such additional burden, the fee shall be calculated based only on the increased burden created by the structure.

Section 6. Impact Fee Due Upon Issuance of Structural Building Permit. The impact fee imposed pursuant to the terms of this Ordinance shall be due and payable upon the issuance of a structural building permit by the City of Greenwood. It is understood that the structural permit is synonymous with the term "structural building permit" as that term is used in I.C. § 36-7-4-1323, in that the issuance of a structural building permit authorizes the applicant to commence construction activities, structural and otherwise. The entire fee which is calculated pursuant to the terms of this Ordinance shall be due at said time unless the amount of the fee upon calculation is greater than Five Thousand Dollars (\$5,000.00), in which case an installment plan may be requested by the applicant in accordance with the terms set forth in I.C. § 36-7-4-1324(a) through (d). The Greenwood Impact Fee Review Board shall establish specific rules consistent with said code provisions for installment payments. The interest rate on any installment plan or deferred payment shall be at the rate allowed on judgments established by Indiana Code, as from time to time amended. The penalty for late payments, if any, shall be established at the discretion of the Impact Fee Review Board.

If a fee payer requests, the amount of the impact fee shall be assessed upon the voluntary submission of a development plan or upon the issuance of the structural building permit, whichever is earlier. For purposes of this section, "assessment" means the act of calculating the amount of the impact fee which shall be due. The City shall make such assessment within thirty

(30) days of the date of such voluntary request or at the issuance of the structural building permit with or without a request.

Section 7. Lien rights Established. Pursuant to I.C. § 36-7-4-1325, the City of Greenwood acquires a lien against the real estate which is the subject of the impact fee. Upon adoption, this Ordinance shall be recorded, and, thereafter, it shall constitute constructive notice of the lien rights of the City of Greenwood with respect to a parcel of real estate which is the subject of an installment payment of an impact fee. The City, may, in its discretion, file a specific instrument setting forth its lien rights with respect to a parcel of real estate which is the subject of an installment payment of an impact fee, and such instrument shall constitute actual notice in addition to the constructive notice provided for by the recording of this Ordinance.

Section 8. Form of Receipt. The Greenwood Clerk-Treasurer shall issue a receipt for any and all impact fees collected, and the form of such receipt shall be as follows:

“Received of _____ (fee payer) _____, this _____ day of _____ the sum of \$ _____ in (full) (partial) satisfaction of Park and Recreation Impact Fees due pursuant to Greenwood Common Council Ordinance No. _____ relating to improvements to be constructed on the real estate described on Exhibit A, attached hereto, made part hereof, and subject to lien rights in favor of the City of Greenwood in the event of partial payment with payments remaining due. The remaining balance due (if any) is in the following amount: \$ _____. This impact fee is dedicated to the creation of the following infrastructure element in accordance with the Zone Improvement Plan: _____

_____, Clerk-Treasurer
City of Greenwood, Indiana

Section 9. Appeals. Any fee payer who believes itself to be aggrieved by the calculation of the impact fee, may appeal from such calculation to the Greenwood Impact Fee Review Board and the Greenwood Impact Fee Review Board shall conduct a hearing with regard thereto. At such hearing, the fee payer shall bear the burden of going forward with the evidence and shall present evidence addressing either of the following propositions:

- (a) A fact assumption used in determining the amount of the impact fee is incorrect;
or
- (b) The amount of the impact fee is greater than the amount allowed under I.C. § 36-7-4-1320, 1321 and 1322.

Upon conclusion of the hearing at which the matter is first presented, or at the conclusion of the hearing if the matter is continued, the Greenwood Impact Review Board shall make a

determination based upon the facts presented and may reverse, affirm, modify, or make such adjustments in the impact fee, as it believes are appropriate under the circumstances, if any, including establishing the amount of an impact fee, a credit, a refund, or any combination of fees, credits, or refunds.

The Greenwood Impact Review Board shall provide a copy of its decision to the City, the Infrastructure Agency and the fee payer involved in the appeal within five (5) days after making its decision, and shall make written findings of fact to support its decision.

An Appeal under this Section must be filed not later than thirty (30) days after the issuance of the structural building permit. The appeal shall be initiated with the filing of a Petition for Review with the Greenwood Clerk-Treasurer's office, together with a filing fee in the amount of One Hundred Dollars (\$100.00). The filing fee shall be refunded in full if:

- (c) The Petition for Review is granted and the impact fee is eliminated, reduced or adjusted by the Greenwood Impact Fee Review Board, by independent action of the City of Greenwood, or by a court having jurisdiction; and
- (d) The reviewing body determines that the amount of the fees, reductions, or credits were arbitrary or capricious.

The Petition for Review shall be in a form calculated to inform the Greenwood Impact Fee Review Board of the nature of the complaint, the Parties to the action, and the relief requested. In addition, the petition shall describe the new development on which the impact fee has been assessed, all facts related to the assessment of the impact fee, and the reasons the petitioner believes that the amount of the impact fee assessed is erroneous or is greater than the amount allowed by the fee limitations set forth in the enabling statute.

The City shall not deny the issuance of a structural building permit on the basis that the impact fee has not been paid, or condition issuance of the permit on the payment of the Impact Fee. If the Impact Fee totals One Thousand Dollars (\$1,000.00) or less, the City may require the fee payer to pay the impact fee or initiate an appeal under this section before the structural building permit is issued.

Section 10. Establishment of Greenwood Impact Fee Review Board. The Common Council hereby establishes an Impact Fee Review Board, which shall consist of three (3) citizen members appointed by the Mayor and who shall qualify as follows:

One (1) member shall be a real estate broker licensed in Indiana;

One (1) member shall be an engineer licensed in Indiana;

One (1) member shall be a certified public accountant.

A Board member may not be a member of the Greenwood Advisory Plan Commission.

- (a) The term of office of the members of the Greenwood Impact Fee Advisory Board shall commence from the date of their appointment and expire five (5) years from the date of appointment.

- (b) At the expiration of the respective terms of each of the Board Members originally appointed, their respective successors shall be appointed in the same manner as the original appointee, and each such succeeding member shall serve for a term of five (5) years. Each member shall continue to serve until his/her successor is appointed and qualified.
- (c) In the event any person appointed as a Board Member shall fail to qualify as provided within ten (10) days after the mailing to him/her of notice of his/her appointment, or if any member after qualifying shall die, resign, vacate office, or in the event a member is unable to hear a petition due to a conflict of interest, a new or temporary member shall be chosen to fill such vacancy in the same manner as provided for the member in respect to whom such vacancy occurred, and the member so chosen and appointed shall serve for the remainder of the vacated term in the event of death, resignation, or vacation of office, and in the event of a temporary replacement due to conflict of interest, the member shall serve for the period necessary to dispose of the petition giving rise to the conflict.
- (d) Such board members shall receive no salaries but shall be entitled to reimbursement for any expenses necessarily incurred in the performance of their duties.
- (e) The Board shall elect one of its members as President, one as Vice-President, each of which officers shall serve from the day of his/her election until the 31st day of January next following his/her election and until his successor is elected and qualified.
- (f) The Board is authorized to adopt by-laws, rules, regulations and procedures as it may deem necessary for the proper conduct of its proceedings, and the carrying out of its duties. Meeting and hearings shall be held at such time as it may determine and upon such notice as it may fix, in accordance with the provisions of the by-laws, rules and regulations adopted and Indiana Law.
- (g) A majority of the Board shall constitute a quorum and the concurrence of a majority shall be necessary to authorize any action.
- (h) The Board shall conduct its review of the amount of an impact fee assessed, the amount of a refund, and the amount of a credit using the procedures established in I.C. § 36-7-4-1338(c).

Section 11. Establishment of a Park and Recreation Infrastructure Improvement Fund.
 There is hereby established the Park and Recreational Infrastructure Improvement Fund of the City of Greenwood. This Fund shall be a non-reverting fund and shall receive any and all sums collected pursuant to this Ordinance to be utilized in connection with the purposes set forth herein. Said Fund shall consist initially of one account based upon the current existence of one Impact Zone. In the event, and only in the event, that an additional Impact Zone is created

hereafter, a separate account shall be maintained for each separate Impact Zone established within the City of Greenwood. Interest earned on the Fund or on any account within the Fund, shall be deposited and maintained within the Fund or the separate account. The Greenwood Clerk-Treasurer shall maintain records of the status of the Fund or any account which may be established therein, and shall make an annual report of said Fund and accounts which shall be available to the public in general and fee payers, upon request, in particular.

Pursuant to I.C. § 36-7-4-1332(e), the Clerk-Treasurer is designated as the City official responsible for acting upon refund requests. In order to facilitate refunds when they may be due, the Clerk-Treasurer is directed to identify the purpose of any impact fee paid in order that a refund, if any, may be paid from the Fund or account into which the fee was originally deposited.

Section 12. Use of Impact Fees Collected Pursuant to this Ordinance. Any and all fees collected pursuant to the provisions of this Ordinance may be utilized for the following purposes only by the City of Greenwood, acting by and through the Greenwood Parks and Recreation Board, which, for the purposes of this Ordinance is identified as the “infrastructure agency” contemplated by I.C. § 36-7-4-1317:

(a) Providing funds to be utilized by the City of Greenwood for the purpose of paying the capital costs of new park and recreational infrastructure that is necessary to serve the new development within the corporate limits of the City and that is identified in the Plan;

(b) An amount not to exceed Five Percent (5%) of the annual collections of the fee to be utilized for expenses incurred by the City for the consulting services used to establish this Ordinance;

(c) To pay any refund due pursuant to the terms of this Ordinance;

(d) To pay the debt service cost on an obligation issued to provide new park and recreational infrastructure described in subparagraph (a) above.

Section 13. House Enrolled Act 1467. The Greenwood Common Council specifically acknowledges the existence of a law adopted by the General Assembly of the State of Indiana which regulates the imposition of impact fee ordinances by municipal corporations within the State of Indiana. It is the intent of the City of Greenwood to comply with such legislation, and this Ordinance shall be construed in all respects to be consistent with the Act. The substantive and procedural requirements of I.C. § 36-7-4-1300 et seq. shall control in the event of conflicts, which are unintended by the Common Council.

Section 14. Amendment and Review. The impact fee provided for herein is based upon data which, in large part, is subject to inflation and other economic and market forces over which the City of Greenwood has no control. The Common Council may, not less than once each year, cause a review to be made by City staff or consultants as may be required, to determine the continuing validity of the Impact Fee, the Impact Fee Zone, and the Zone Improvement Plan. The Common Council shall consider and adopt such amendments as are necessary to cause a substantive compliance with the rational nexus test to continue, to insure that procedural due process is maintained or enhanced and to insure that this Ordinance meets the requirements of the Indiana Code § 36-7-4-1300 series. To the extent required by the facts and circumstances, this process shall include the steps necessary to update the Zone Improvement Plan and the Comprehensive Plan.

Section 15. Effective Date. This Ordinance shall be in full force and effect six (6) months after its passage, approval and publication according to law. (*February 4, 2004*)

Passed by the Common Council of the City of Greenwood, Indiana, this 4th day of August, 2003.